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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------|
| 10/827,000 | 04/19/2004 | Christopher V. Brock | 27635-2 | 3485 |
| 33417 | 7590 | 12/15/2005 | EXAMINER | |
| LEWIS, BRISBOIS, BISGAARD & SMITH LLP 221 NORTH FIGUEROA STREET SUITE 1200 LOS ANGELES, CA 90012 | | | CLEMENT, MICHELLE RENEE | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3641 | |

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/827,000 | BROCK ET AL. | |
| | Examiner Michelle (Shelley) Clement | Art Unit 3641 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 April 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5,7,8,10-15,17 and 19-29 is/are rejected.
- 7) Claim(s) 4,6,9,16 and 18 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4/10 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 4/10 and 12 recites the limitation "the nose cap". There is insufficient antecedent basis for this limitation in the claim, since applicant has previously claimed both an inner hard nose cap and an outer soft nose cap, it is not clear which one constitutes "the nose cap".

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 5 10-15, 17, 22-25 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Gibson et al. (US Patent # 6,615,739). Gibson et al. discloses a less lethal projectile comprising a body having a concentric cavity, a nose cap attached to the body, the nose cap having a plurality of scores/slits therein which will open upon impact allowing a fluid to escape. The projectile comprising a frangible disk to seal fluid in a cavity in the body, the

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nose cap made of plastic. The nose cap has a rounded front surface. The fluid comprising a marking dye. The projectile comprising a limiting column contained in the body and a second limiting column contained in the cap. The frangible disk is tightly held between a shoulder in the body and a shoulder in the cap. The disk has a cylindrical projection which projects into the fluid. The nose cap smaller in diameter than the body (in as much as applicant's nose cap is smaller).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7, 8, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson et al. as applied to claims 1 and 14 above. Gibson et al. discloses the claimed projectile except the specific fluid material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a fluid having a density of about 2 or a mixture comprising glycerine and a heavy inorganic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

8. Claims 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibson et al. See ¶ 5 above. Gibson et al. discloses the claimed projectile except the specific materials for the frangible disk. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a disk of polymer coated cardboard, since it has been held to be

within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

9. Claims 4, 6, 9, 16, and 18 are objected to as being dependent upon a rejected base claim, but would possibly be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Saxby (US Patent # 4,942,818), Smith (US Patent # 5,001,880), Grinberg (US Patent # 5,009,164), Luxton (US Patent # 5,035,183), Sweeney et al. (US Patent # 3,791,303), Abbott et al. (US Patent # 3,650,313), and Basel et al. (US Patent Application Publications # 2005/0188886 & # 2005/0016412).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Clemons